

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICK A. KUJAWSKI

Appeal No. 95-2085
Application 07/976,524¹

ON BRIEF

MAILED

JUN 21 1996

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before CALVERT, FRANKFORT and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1, 4, 6 through 8, 11 and 14 through 16.² Claim 12, the only other claim pending in the application, stands withdrawn from

¹ Application for patent filed November 16, 1992.

² Claim 1 has been amended subsequent to final rejection (see Paper No. 17, filed on August 3, 1995).

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consideration pursuant to 37 CFR 1.142(b) as being directed to a non-elected invention.

The subject matter on appeal relates to a carrier for bundling and routing a wire harness and fuel/brake lines along the underbody of an automobile. Claim 1 is illustrative and reads as follows:

1. A carrier for at least one tube and a flexible wire harness of a vehicle comprising:

an elongate inner channel having in cross section a generally C-shape configuration with a central portion interconnecting a pair of legs terminating in spaced apart free edges forming a longitudinally extending raceway therein opening transversely to the exterior thereof and constructed and arranged to receive through its opening and in the raceway a portion of a flexible wire harness extending longitudinally therein,

an elongate outer channel having in cross section a generally C-shape configuration with a central portion interconnecting a pair of legs terminating in spaced apart free edges forming a complementary raceway extending longitudinally therein, opening transversely to the exterior thereof, and constructed and arranged to receive through its opening and in its raceway a complementary portion of said legs of said inner channel so that in assembly said channels collectively encircle and enclose a portion of the wire harness, each of said channels subtends more than a semicircle and is at least somewhat resilient and in assembly said legs of said inner channel underlap and snap into complementarily engagement with said legs of said outer channel, and

at least one tube retainer clip on the exterior of and carried by said inner channel on the central portion thereof, said clip being at least somewhat resilient, extending longitudinally of said inner channel, having therein a longitudinally extending raceway opening transversely to the exterior thereof and in cross section subtends more than a

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semicircle and is constructed and arranged to releasably receive and retain a tube of a vehicle, and when said channels are in assembly said retainer clip is received between said free edges of said legs of said outer channel and projects outwardly thereof.

The references relied upon by the examiner as evidence of obviousness are:

Knight et al. (Knight)	814,217	Mar. 6, 1906
Sparks et al. (Sparks)	4,864,697	Sep. 12, 1989
Guthke et al. (Guthke)	5,243,138	Sep. 7, 1993
		(filed Mar. 11, 1991)
French Patent Document ³	2 247 052	May 2, 1975
Muntjanoff et al. (International Application) ⁴	WO 87/00256	Jan. 15, 1987

Claims 1, 4, 6 through 8, 11 and 14 through 16 stand rejected:

a) under 35 USC 103 as being unpatentable over the French reference;

³ An English language translation of this reference, prepared by the Patent and Trademark Office, is appended hereto.

⁴ A copy of this reference is appended hereto.

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b) under 35 USC 103 as being unpatentable over the International application in view of Knight;⁵

c) under 35 USC ~~103~~ as being unpatentable over Knight in view of the International application;⁵ and

d) under 35 USC 103 as being unpatentable over the International application in view of Knight or Knight in view of the International application, and further in view of either Sparks or Guthke.⁵

With regard to the first of these rejections, the French reference discloses an electric wiring carrier consisting of channel-shaped housing and cover sections 1 and 10 which are adapted to be joined to one another to enclose the wiring. The exterior surface of the housing section carries a series of elastic mounting projections 15 which are designed to be press-fitted into openings in a support structure to affix the carrier thereto (see page 3 in the translation). As shown in the drawing figure, each projection has a slot extending therethrough, presumably to allow the projection to flex inwardly as it is inserted through the opening.

⁵ This rejection was entered for the first time in the main answer (Paper No. 7).

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As noted above, claim 1 recites a carrier comprising inner and outer channels and at least one tube retainer clip on the exterior of and carried by the inner channel. The tube retainer clip is defined as "having therein a longitudinally extending raceway opening transversely to the exterior thereof and in cross section subtends more than a semicircle and is constructed and arranged to releasably receive and retain a tube of a vehicle."

The examiner considers that the elastic mounting projections 15 disclosed by the French reference constitute retainer clips of the type recited in claim 1, but concedes that these mounting projections do not have raceways which subtend more than a semicircle as required by that claim (see pages 2 and 3 in the main answer). Nonetheless, the examiner concludes that "the exact configuration of the ... retainer clip is deemed to be a matter of design choice, since such configuration per se solves no stated problem" (main answer, page 3).

The appellant's disclosure clearly indicates, however, that the retainer clip raceways subtend more than a semicircle to ensure retention of brake and gas lines (see page 5 in the specification). Thus, contrary to the examiner's contention, the claimed retainer clip raceway configuration does solve a stated

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problem. As a consequence, it cannot simply be dismissed as an obvious matter of design choice (compare In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975)). Rejections under 35 USC 103 must rest on a factual basis, and an examiner may not, because of doubts that an invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). In the present case, there is simply nothing in the French reference which would have suggested modifying the elastic mounting projections 15 or any other portion of the electric wiring carrier disclosed therein so to arrive at a carrier having at least one tube retainer clip of the type recited in claim 1.

Accordingly, we shall not sustain the standing 35 USC 103 rejection of claim 1, or of claims 4, 6 through 8, 11 and 14 through 16 which depend therefrom, as being unpatentable over the French reference.

Nor shall we sustain any of the standing 35 USC 103 rejections claims 1, 4, 6 through 8, 11 and 14 through 16 which are founded upon the combined teachings of the International application and Knight.

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The International application discloses a clamp for securing a plurality of members, such as hydraulic hoses 12, 14, with respect to one another. The clamp consists of a pair of flexible C-shaped channel members 16, 18 which are adapted to be clamped about hose 14 by threaded members 40 extending through abutting flanges 30 on the ends of the channel members. The outer peripheries of the channel members define a plurality of open sockets or retainer clips 22, each subtending a 270° arc and adapted to receive a hose 12. The examiner concedes that this clamp does not meet the limitations in claim 1 requiring the inner and outer channels to subtend more than a semicircle such that in assembly the legs of the inner channel underlap and snap into complementary engagement with the legs of the outer channel (see page 3 in the main answer).

Knight discloses an electrical conductor carrier comprising a pair of elastic "over-half-circle open tubes" (page 1, line 46) which are adapted to be snapped into complementary underlapping/overlapping engagement with one another to form a casing for the conductors. The examiner concedes that this carrier does not meet the limitations in claim 1 relating to the retainer clip.

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Notwithstanding the foregoing deficiencies of the International application and Knight with respect to the subject matter recited in claim 1, the examiner concludes that it would have been obvious to one of ordinary skill in the art:

(1) to modify the clamp disclosed by the International application "by joining the channel members thereof together as taught by Knight et al. instead of the bolting arrangement disclosed [therein] in order to provide for a conduit which can be assembled more quickly" (main answer, page 4), and

(2) to modify the carrier disclosed by Knight in view of the International application "by providing retainer clips extending from the channels thereof in order to provide for a more versatile conduit by allowing it to carry tubes or wires of different type and dimension" (main answer, pages 4 and 5).

The disparate teachings of the International application and Knight, however, would not have suggested combining these two references in the ways advanced by the examiner or in any other manner that would result in the carrier recited in claim 1. In proposing to modify the International application's clamp and Knight's electrical conductor carrier in view of one another, the examiner has engaged in an impermissible hindsight reconstruction of the appellant's invention by using the claims on appeal as a template to selectively pick and choose

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from among isolated disclosures in the prior art. The examiner's additional reliance on either Sparks or Guthke does not cure this shortcoming in the basic International application and Knight combinations.

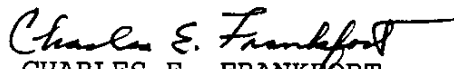
For these reasons, the references applied by the examiner in support of the various 35 USC 103 rejections on appeal fail to establish that the differences between the subject matter recited in claims 1, 4, 6 through 8, 11 and 14 through 16 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.

The decision of the examiner is reversed.

REVERSED



IAN A. CALVERT)
Administrative Patent Judge)



CHARLES E. FRANKFORT)
Administrative Patent Judge)



JOHN P. MCQUADE)
Administrative Patent Judge)

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